DKW ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
NOV 29 2013
at 3 o'clock and 15 min. P M.
SUE BEITIA, CLERK

FIRST Galiana Ogeone
#750 Amana st, # 2006.
Honolulu, Hi, 96814
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CV 13-00553 DKW-RLP

GALINA OGEONE	)	FIRST
Plaintiff Pro Se	)	AMENDED
V	)	COMPLAINT
	)	CERTIFICATE OF SERVICE
JUDGE NACINO	)	
	)	Exhibits 1-14
Defendant	)	

FIRST AMENDED COMPLAINT

PARTIES

Plaintiff –Pro Se, Galina Ogeone.
Defendant- Judge Nacino individually and in his official capacity as a Judge of the First Circuit Court State of Hawaii.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury trail.

JURISDICTION AND VENUE

Plaintiff claims federal jurisdiction pursuant to Article III § 2, which extends the jurisdiction to cases arising under the U.S. Constitution.

Plaintiff brings this suit pursuant to Title 42 U.S. Code § 1983 for violations of certain protections guaranteed to him by the Fifth, and Fourteenth Amendments.

STATEMENT OF FACTS

Plaintiff claims violations of her civil rights, which are guaranteed by the United States Constitution.

1.This case was originated in The Circuit Court of the First Circuit State of Hawaii, Case No.12-1-3278-12 ECN.

2. Defendant Yang did not file her answer to Plaintiff 's Complaint on time.

3. On February 25, 2013 Plaintiff filed Request for Entry of Default (by Clerk).
/Exh No. 1- Request for Entry of Default (by Clerk)/

4. Plaintiff's Request for Entry of Default (by Clerk) was filed without certificate of service and was never been served upon Judge Nacino and Defendant Yang.

The Clerk of the Court refused to enter Default against the Defendant and did not set a date on the docket for a default hearing, because according to the HRCP No. 55 (b): "Default by The Clerk possible when the plaintiffs claim against a defendant is for a sum certain or for a sum which can by computation be made certain."

That's why next day on February 26, 2013 Plaintiff filed Request for Motion for Default Judgment where Plaintiff requested the Judge to establish means by which to determine the amount of damages to be awarded against Defendant.

/ Exh No-2— Plaintiff's Request for Motion for Default Judgment/

5. On March 19, 2013 Defendant Yang filed untimely Motion to set aside "The Entry of Default " of February 25, 2013, It was filed after 24 days when "The Entry of Default" was filed in the Docket, According to HRCP, Rule 8- Motion have to be filed within 18 days.."

6. On March 19, 2013 Judge Nacino accepted untimely Motion to set aside "The Entry of Default "of February 25, 2013 and scheduled hearing on April 01, 2013.

/ Exh No 12. -Court minute List from the First circuit court Docket /

7. Plaintiff was not served with Motion to set aside "The Entry of Default" before March 21, 2013.

Unexpectedly on March 21, 2013 Judge Nacino ruled on the Motion to set aside "The Entry of Default", but on March 21, 2013 Plaintiff had not yet been served with the Motion to set aside the Entry of Default.

On March 21, 2013 Plaintiff came to her hearing, which was scheduled for her request for Motion for Default Judgment, but on the first minute of the hearing Judge Nacino offered Defendant's attorney Osaki to proceed with his Motion to set aside the Entry of Default and granted Defendant's Motion to set Aside The Entry of Default.

Plaintiff did not understand what kind of Motion was discussed and what kind of Motion was set aside.

/Exh No. 11- Transcript-page 2 and 13, shows that Judge Nacino ruled on Defendant's motion on March 21, 2013. /

8. On March 21, 2013 Judge Nacino ruled on untimely Motion to set aside "The Entry of Default" , but the Oder granted Defendant's motion to set aside the entry of default . was filed in the Docket on April 05, 2013.

/ Exh- No. 6-Docket History from the first Circuit Court,shows that order was filed in the Docket on April05, 2013./

8. Judge Nacino violated HRCP, Rule No 8 and Rule No. 7- so, the process was not due.

9. On April 04, 2013, in the morning Plaintiff filed Notice of Appeal of interlocutory Order Granting Defendant's Motion to set Aside The Entry of Default.

10. On April 04, 2013, in the afternoon US Attorney Nakakuni filed Notice of Filing of Notice of Removal of civil action in The Circuit Court of the First Circuit State of Hawaii.

On April 04, 2013, US Attorney Nakakuni filed Notice of Removal of civil action in USDC.
US Attorney Nakakuni's Notice of Filing of Notice of Removal of civil action and Notice of Removal of Civil action did not state that it meets the thirty-day requirement to remove the action. She violated the law-28 USC § 1446 - Procedure for removal of civil actions.
/ Exh No. 5- Notice of Filing of Notice of Removal of civil action filed in the first dircuit cout, Exh No. 4- of Notice of Removal of civil action in USDC. /

Notice of removal was filed on April 04, 2013 after 67 days when complaint and summons were served upon Defendant on February 01, 2013.
/ Exh No.14- - Return and Acknowledgment of service./
11. According to 28 USC § 1446 - Procedure for removal of civil actions: " defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

But there is no a Notice of removal **signed by Defendant** pursuant to Rule 11 of the Federal Rules of Civil Procedure (by Defendant Yang) which contains a short and plain statement of the grounds for removal, together with a copy of the Complaint, Summons, and request for representation" .
There is only one Notice of Removal, which is signed by US Attorney Nakakuni.
/ Exh No 4-Notice of removal of civil action, signed by US Attorney Nakakuni./

12. HHS filed request for representation together with a copy of the Complaint, Summons at the US Attorney Nakakuni's office.
According to assistant Harry Yee's Declaration the US Department of Health and Human Services delivered the Complaint and Summons to US Attorney Nakakuni's office on April 4, 2013, he wrote in his Declaration that: "We... became aware of underlying state court action indirectly through... the US Department of Health and Human Services , when THEIR REQUEST FOR REPRESENTATION, accompanied by a copy of state court COMPLAINT and SUMMONS was received by US Attorney ." and " this notice of removal was filed with the court four days after the US Attorney received a copy of the Complaint"
/ Exh No. 6-Harry Yee's Declaration that HHS filed Complaint, Summons and request for representation at US Attorney Nakakuni's office, Exh No 4-Notice of removal of civil action, signed by US Attorney Nakakuni./

13. On April 12, 2013 Plaintiff filed Objection to Notice of Removal in the First Circuit Court. According to the law;" 28 USC § 1447-"(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446 (a)."

a). Plaintiff demanded to remand the case on the basis of the defective removal-Notice of removal was filed after 67 day when Complaint and Summons were served upon Defendant and HHS, which is no a "A PARTY"; HHS filed Complaint, Summons and

request for representation at US Attorney Nakakuni's office.
/ Exh No 7- Plaintiff's Objection to Notice of Removal. Exh No. 4- - Return and Acknowledgment of service, Exh- No. 6- Harry Yee's Declaration that HHS filed Complaint, Summons and request for representation at US Attorney Nakakuni's office/

b). Plaintiff filed Objections to Notice of removal on April 12, 2013-before the Order directing the Clerk to issue Writ of Certiorari to remove the case to USDC was issued on April, 16, 2013.
c). On April 12, 2013 Plaintiff filed Objections to Notice of removal before the Writ of Certiorari was issued on April 24, 2013.
/Exh No. 7-Plaintiff's Objection to Notice of Removal, Exh No. 8- Docket History from USDC, which shows that Plaintiff filed Objection to Notice of removal before Writ of Certiorari was issued. /
14. Judge Nacino totally disregarder Plaintiff's Objection to Notice of Removal of civil Action., he did not answer to Plaintiff's Objection to Removal of civil action , he did not schedule due date for Defendant's Opposition to Plaintiff's Objections. Judge Nacino left Plaintiff's Objection without any time period built into the process as to period of notice, period of receipt of objection, period of reply, he violated HRCP, Rule 7.
/Exh No.6-Docket History from the First Circuit Court , shows that there was no schedule for Defendant to file opposition to Plaintiff's Objection to Notice of removal of civil action./
15. Judge Nacino did not remand the case on the ground of defective removal.
He violated Law-"Remand is Compulsory when Removal is untimely. The court must remand when the procedural requirement of filing for removal within thirty days is not met. See Snapper, Inc. v. Redan, 171 F.3d 1249, 1253 (11th Cir. 1999) ("The failure to comply with these express statutory requirements for removal can fairly be said to render the removal 'defective' and justify a remand pursuant to § 1447(c)."); Schmitt v. Ins. Co.
16. On March 25, 2013 Plaintiff filed Plea to keep case open, Plaintiff needed to go to her sister's funeral, but Judge Nacino denied exparte motion plea to keep case open.
The hearing, which was scheduled on April 01, 2013 for motion to set aside the Entry of Default was converted into non-hearing motion, so there were no hearing to attend and there were no reason to deny Plaintiff's exparte motion plea to keep case open.
/Exh No.9-Exparte motion-denied by Judge Nacino, Exh No. 12- Court Minute List from the First circuit court/
17. Judge Nacino acted unconstitutionally; he violated Law and Plaintiff's civil rights to fair legal proceedings, which are guaranteed by US Constitution.
Constitutional provisions establish fundamental rights in society: "Government limited by the constitution, the violation of a citizens rights should never be justified due to the overriding government goals or objectives, and that no branch of the government be allowed to extend it's power beyond it's legal limits"
Plaintiff has suffered substantially as a direct and proximate result of Judge Nacino's unlawful actions which has caused Plaintiff to continue to experience mental-emotional-psychological ill effects.
INJURIES -yet to be proven.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

1. Issue injunctive relief, as this Court deems appropriate and just.
2. Issue declaratory relief, as this Court deems appropriate and just
3. Issue other relief, as this Court deems appropriate and just.

DECLARATION: Plaintiff –Galina Ogeone declares under penalty of perjury that the foregoing is true and correct.

ATTACHMENTS

1. Exh No. 1-- Request for Entry of Default (by Clerk)
2. Exh No-2— Plaintiff's Request for Motion for Default Judgment, where Plaintiff requested judge to establish means by which to determine the amount of damages to be awarded against Defendant.
3. Exh No 3- Defendant's Motion to set aside "The Entry of Default" of 02- 25-2013
4. Exh No. 4- US Attorney Nakakuni's Notice of Removal of civil action in USDC
5. Exh No.5- Notice of Filing of Notice of Removal of civil action, in the First Circuit .
6. Exh- No. 6- Harry Yee's Declaration that HHS filed Complaint, Summons and request for representation at US Attorney Nakakuni's office

7. Exh No. 7- Plaintiff's Objection to Notice of Removal.
8. Exh No. 8- Docket History from USDC, which shows that Plaintiff filed Objection to Notice of removal before Writ of Certiorari was issued, 2 pages
9. Exh No. 9-Order Granting Defendant to set Asiode The Entry of Default.
10. .Exh No.10 -Exparte motion-denied by Judge Nacino.
11. Exh No. 11-Transcript- page 2 and 13, which shows that on March 21, 2013 Judge Nacino offered to Defendant's attorney Osaki to proceed with his Motion to set aside the entry of default and on page 13 Judge Nacino granted Defendant's motion to set aside "The Entry of Default."
12. Exh No. 12. - Court minute List from the First circuit court Docket .
13. Exh No. 13- Docket History from the First circuit court, 2 pages.
14. Exh 14- - Return and Acknowledgment of service

Plaintiff-Galina Ogeone:

Date: November 29, 2013

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Phone: 808-366-8119

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GALINA OGEONE	)	CV 13-00553 DKW-RLP
Plaintiff	)	
V	)	
JUDGE NACINO	)	
	)	
Defendant	)	

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRU AND CORRECT COPY OF THE FOREGOING DOCUMENT -AMENDED COMPLAINT WAS DULY SERVED UPON DEFENDANT- JUDGE NACINO.

Address:
Judge Nacino
First Circuit Court, 15th Division,
777, Punchbowl Street, Honolulu, Hawaii, 96813.
phone-539-4116.

By means of process server.

Plaintiff: Galina Ogeone -

Date : November, 29-2013.